

1 BILL LOCKYER, Attorney General
2 of the State of California
3 GAIL M. HEPPELL, State Bar No. 84134
4 Supervising Deputy Attorney General
5 MARA FAUST, State Bar No. 111729
6 Deputy Attorney General
7 California Department of Justice
8 1300 I Street, Suite 125
9 P.O. Box 944255
10 Sacramento, California 94244-2550
11 Telephone: (916) 324-5358
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13 Attorneys for Complainant

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1 In the Matter of the Accusation Against: Case No.

2 **DAVID A. HARTWIG**
3 P.O. Box 464
4 Mi-Wuk Village, CA 95346

5 **A C C U S A T I O N**

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1 Complainant alleges:

2 **PARTIES**

3 1. Steven K. Hartzell ("Complainant") brings this Accusation solely in his
4 official capacity as the Executive Officer of the Physical Therapy Board of California, Department
5 of Consumer Affairs.
6
7 2. On or about October 30, 1997, the Physical Therapy Board issued Physical
8 Therapy License Number PT 22617 to David A. Hartwig ("Respondent"). The Physical Therapy
9 License was in full force and effect at all times relevant to the charges brought herein and will expire
10 on August 31, 2005, unless renewed.
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JURISDICTION

3 3. This Accusation is brought before the Physical Therapy Board ("Board"),

4 under the authority of the following sections of the Business and Professions Code ("Code").

5 4. Section 2262 of the Code states:

6 Altering or modifying the medical record of any person, with fraudulent

7 intent, or creating any false medical record, with fraudulent intent, constitutes unprofessional

8 conduct.

9 In addition to any other disciplinary action, the Division of Medical Quality

10 or the California Board of Podiatric Medicine may impose a civil penalty of five hundred

11 dollars (\$500) for a violation of this section.



12 5. Section 2660 of the Code states:

13 The board may, after the conduct of appropriate proceedings by the

14 examining committee under the Administrative Procedure Act, suspend for not more

15 than 12 months, or revoke, or impose probationary conditions upon, or issue subject to terms

16 and conditions any license, certificate, or approval issued under this chapter for any of the

17 following causes:

18 (a) Advertising in violation of section 17500 of the Business and

19 Professions Code.

20 (b) Fraud in the procurement of any license under this chapter.

21 (c) Procuring or aiding or offering to procure or aid in criminal abortion.

22 (d) Conviction of a crime which substantially relates to the qualifications,

23 functions, or duties of a physical therapist. The record of conviction or a certified

24 copy thereof shall be conclusive evidence of such conviction.

25 (e) Impersonating or acting as a proxy for an applicant in any

26 examination given under this chapter.

27 (f) Habitual intemperance.

28 (g) Addiction to the excessive use of any habit-forming drug.

29 (h) Gross negligence in his or her practice as a physical therapist.

30 (i) Conviction of a violation of any of the provisions of this chapter or of

31 the State Medical Practice Act, or violating, or attempting to violate, directly or

32 indirectly, or assisting in or abetting the violating of, or conspiring to violate any

33 provision or term of this chapter or of the State Medical Practice Act.

34 6. Section 2661.5 of the Code states in relevant part that:

35 In any order issued in resolution of a disciplinary proceeding before the

36 board, the board may request the administrative law judge to direct any licensee found guilty

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2 of unprofessional conduct to pay to the board a sum not to exceed the actual and reasonable
costs of investigation and prosecution of the case.

3 7. Section 725 of the Code states in relevant part that:

4 Repeated acts of clearly excessive prescribing or administering of drugs or
5 treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated acts of
6 clearly excessive use of diagnostic or treatment facilities as determined by the standard of
the community of licensees is unprofessional conduct for a physician and surgeon, dentist,
podiatrist, psychologist, physical therapist, chiropractor, or optometrist.

7 8. Section 810 of the Code states:

8 (a) It shall constitute unprofessional conduct and grounds for disciplinary
9 action, including suspension or revocation of a license or certificate, for a health care
professional to do any of the following in connection with his or her professional activities:

10 (1) Knowingly present or cause to be presented any false or fraudulent claim
11 for the payment of a loss under a contract of insurance.

12 (2) Knowingly prepare, make, or subscribe any writing, with intent to present
or use the same, or to allow it to be presented or used in support of any false or fraudulent
claim.

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14 9. Section 2620 of the Code states that:

15 Physical therapy means the art and science of physical or corrective
16 rehabilitation or of physical or corrective treatment of any bodily or mental condition of any
17 person by the use of the physical, chemical, and other properties of heat, light, water,
18 electricity, sound, massage, and active, passive, and resistive exercise, and shall include
19 physical therapy evaluation, treatment planning, instruction and consultative services. The
20 use of roentgen rays and radioactive materials, for diagnostic and therapeutic purposes, and
the use of electricity for surgical purposes, including cauterization, are not authorized under
the term Aphysical therapy@ as used in this chapter, and a license issued pursuant to this
chapter does not authorize the diagnosis of disease.

21 **FIRST CAUSE FOR DISCIPLINE**
22 **(Excessive Prescribing of Physical Therapy Treatment)**
23 **[Bus & Prof Code ' ' 725, 2660(h)]**

24 10. Respondent Hartwig is subject to disciplinary action under sections 725 and
25 2660 of the Code for excessive prescribing of physical therapy treatment and gross negligence based
on the following facts:



Patient C.G.K.

27 (1) On March 2, 1998, patient C.G.K. was referred to Kinections Sports

Medicine and Physical Therapy, Inc., for physical therapy treatment following a motor vehicle accident.

(2) C.G.K. was first seen by respondent Kiefer, PT, from March 2, 1998 through June 26, 1998. Patient C.G.K. was treated for 23 visits from respondent Kiefer. During this period, respondent Kiefer did no re-evaluations nor did respondent address the patient=s complaint of increased pain in April 1998 through June 1998.

(3) On June 26, 1998, patient C.G.K. was treated by respondent Hartwig, PT.

(4) On July 1, 1998, physical therapy care of C.G.K. was assumed by respondent Cedros, a physical therapy assistant, allegedly under the supervision of respondent Hartwig. Cedros treated this patient for 42 visits from July 1 1998 through March 24, 1999. In this period, there are no re-evaluations of patient C.G.K. and there are no consultations recorded between PT Hartwig and PTA Cedros.

11. Respondent Hartwig=s treatment of C.G.K. constitutes excessive prescribing of physical therapy and gross negligence in that he treated the patient without medical diagnosis, failed to appropriately communicate with the referring physician, and failed to perform appropriate re-evaluation of the patient.

SECOND CAUSE FOR DISCIPLINE
(Dishonest Billing)

[Bus. & Prof. Code ' 810(a)(1) & (2), 2262, 2660(h) & (l)]

12. Complainant realleges paragraph 10 above as if fully set forth at this point.

13. Respondent Kiefer is subject to disciplinary action under sections 810(a)(1) and (2), 2262, and 2660(h) and (l) of the Code for excessive prescribing of physical therapy services based on the following facts:

(1) Patient C.G.K. was not offered the fee schedule at the time of service, nor any available options for payment.

(2) Since no properly supervised physical therapy treatments were

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2 provided to patient C.G.K. after June 29, 1998, the patient was overbilled \$1,196.23 (for 23 visits)
3 and the patient was double billed for the office visit of March 2, 1998.

4 14. Respondent Hartwig=s treatment of C.G.K. constitutes dishonest billing and
5 gross negligence in that he treated the patient without medical diagnosis, failed to perform
6 appropriate re-evaluation of the patient, failed to provide adequate and appropriate supervision of the
7 physical therapy assistant for nine months, and failed to refer the patient to another provider when
8 progress was not being made.

9 **THIRD CAUSE FOR DISCIPLINE**
(Excessive Prescribing of Physical Therapy Treatments)
10 [Bus. & Prof. Code ' 725 and 2660(k)]

11 15. Complainant realleges paragraph10 above as if fully set forth at this point.

12 (1) Respondent Hartwig employed physical therapy assistants and aides in
13 the treatment of patient C.G.K. without adequate supervision in violation of section 2660(k), in that
14 respondent Kiefer aided and abetted a person to both engage in the unlawful treatment of physical
15 therapy and to engage in excessive prescribing of physical therapy.

16 **FOURTH CAUSE FOR DISCIPLINE**
(Gross Negligence)
17 [Bus. & Prof. Code ' 2660(h)]

18 16. Complainant realleges paragraph 10 above as if fully set forth at this point.

19 17. Respondent failed to produce and maintain adequate documentation of the
20 physical therapy treatments provided to C.G.K. in violation of section 2660 of the Code which
21 constitutes gross negligence.

22 **FIFTH CAUSE FOR DISCIPLINE**
(Excessive Prescribing of Physical TherapyTreatment)
23 [Bus. & Prof. Code ' 725, 2660(h)]

24 18. Respondent Hartwig is subject to disciplinary action under sections 725 and
25 2660 of the Code for excessive prescribing of physical therapy treatment and gross negligence based
26 on the following facts:

27 Patient K.A.

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2 (1) From May 2, 2000 through January 3, 2001, patient K.A. was seen at
3 Kinections Sports Medicine and Physical Therapy, Inc., for physical therapy treatment.

4 (2) K.A. was first seen by respondent Cedros, PTA, and treated by him for
5 approximately 40 visits. During this period, respondent Hartwig, PT, wrote one visit note and co-
6 signed 20 notes by PTA Cedros.

7 (3) There are no PT/PTA conferences, and there is no measurable
8 objective data to show patient=s progress or lack of progress.

9 19. Respondent Hartwig=s treatment of K.A. constitutes excessive prescribing of
10 physical therapy and gross negligence in that he failed to perform appropriate re-evaluation of the
11 patient or measure the patient=s progress.

12 **SIXTH CAUSE FOR DISCIPLINE**

13 **(Dishonest Billing)**

14 **[Bus. & Prof. Code ' 810(a)(1) & (2), 2262, 2660(h) & (l)]**

15 20. Complainant realleges paragraph 18 above as if fully set forth at this point.

16 21. Respondent Hartwig is subject to disciplinary action under sections 810(a)(1)
17 and (2), 2262, and 2660(h) and (l) based on the following facts:

18 (1) Since no properly supervised physical therapy treatments were
19 provided to patient K.A. for 20 visits, the patient and/or PERS care/Blue Cross was overbilled
20 \$1,750.00.

21 22. Respondent Hartwig=s treatment of K.A. constitutes dishonest billing and
22 gross negligence in that he treated the patient without medical diagnosis, failed to perform
23 appropriate re-evaluation of the patient, failed to provide adequate and appropriate supervision of the
24 physical therapy assistant for nine months, and failed to refer the patient to another provider when
progress was not being made.

25 **SEVENTH CAUSE FOR DISCIPLINE**

26 **(Excessive Prescribing of Physical Therapy Treatments)**

[Bus. & Prof. Code ' ' 725 and 2660(k)]

27 23. Complainant realleges paragraph 18 above as if fully set forth at this point.

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2 (1) Respondent Hartwig employed physical therapy assistants and aides in
3 the treatment of patient K.A. without adequate supervision in violation of section 2660(k), in that
4 respondent Kiefer aided and abetted a person to both engage in the unlawful treatment of physical
5 therapy and to engage in excessive prescribing of physical therapy.

6 **EIGHTH CAUSE FOR DISCIPLINE**
7 **(Excessive Prescribing of Physical Therapy Treatments)**
8 **[Bus. & Prof. Code ' 2660(h)]**

9 24. Complainant realleges paragraph 18 above as if fully set forth at this point.

10 25. Respondent failed to produce and maintain adequate documentation of the
11 physical therapy treatments provided to patient K.A. in violation of section 2660 of the Code which
12 constitutes gross negligence.

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14 **NINTH CAUSE FOR DISCIPLINE**
15 **(Excessive Prescribing of Physical Therapy Treatments)**
16 **[Bus. & Prof. Code ' ' 725 and 2660(h)]**

17 26. Respondent Hartwig is subject to disciplinary action under sections 725 and
18 2660 of the Code for excessive prescribing of physical therapy treatment and gross negligence based
19 on the following facts:

20 **Patient L.L.**

21 (1) From approximately November 1, 2000 through January 12, 2001,
22 patient L.L. treated at Kinections Sports Medicine and Physical Therapy, Inc., for physical therapy
23 treatment.

24 (2) Patient L.L. was treated by respondent Hartwig, PT, for three visits.
25 The remaining 13 visits, the patient was treated by respondent Cedros, PTA Respondent Hartwig
26 only co-signed every other visit or approximately seven visits. There was no plan for reassessment.

27 27. Respondent Hartwig=s treatment of L.L. constitutes excessive prescribing of
28 physical therapy and gross negligence in that he failed to perform appropriate re-evaluation of the
29 patient.

30 **TENTH CAUSE FOR DISCIPLINE**

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2 **(Dishonest Billing)**
3 **[Bus. & Prof. Code ' ' 810(a)(1) & (2), 2262, 2660(h) & (l)]**

4 28. Complainant realleges paragraph 26 above as if fully set forth at this point.

5 29. Respondent Hartwig is subject to disciplinary action under sections 810(a)(1)
6 and (2), 2262, and 2660(h) and (l) based on the following facts:

7 (1) Since no properly supervised physical therapy treatments were
8 provided to patient L.L., approximately six visits were overbilled \$858.48.

9 30. Respondent Hartwig=s treatment of L.L. constitutes dishonest billing and
10 gross negligence in that he treated the patient without medical diagnosis, failed to perform
11 appropriate re-evaluation of the patient, failed to provide adequate and appropriate supervision of the
12 physical therapy assistant for nine months, and failed to refer the patient to another provider when
13 progress was not being made.

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15 **ELEVENTH CAUSE FOR DISCIPLINE**
16 **(Excessive Prescribing of Physical Therapy Treatments)**
17 **[Bus. & Prof. Code ' ' 725 and 2660(k)]**

18 31. Complainant realleges paragraph 26 above as if fully set forth at this point.

19 (1) Respondent Hartwig employed physical therapy assistants and aides in
20 the treatment of patient L.L. without adequate supervision in violation of section 2660(k), in that
21 respondent Kiefer aided and abetted a person to both engage in the unlawful treatment of physical
22 therapy and to engage in excessive prescribing of physical therapy.

23 **TWELFTH CAUSE FOR DISCIPLINE**
24 **(Gross Negligence)**
25 **[Bus. & Prof. Code ' 2660(h)]**

26 32. Complainant realleges paragraph 26 above as if fully set forth at this point.

27 33. Respondent failed to produce and maintain adequate documentation of the
28 physical therapy treatments provided to patient L.L. in violation of section 2660 of the Code which
29 constitutes gross negligence.

30 **PRAYER**

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WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Physical Therapy Board issue a decision:

1. Revoking or suspending Physical Therapy License Number PT-22617, issued to David A. Hartwig;
2. Ordering David A. Hartwig to pay the Physical Therapy Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 2661.5;
3. Taking such other and further action as deemed necessary and proper.

DATED: September 9, 2003.

Original Signed By:
STEVEN K. HARTZELL
Executive Officer
Physical Therapy Board of California
Department of Consumer Affairs
State of California
Complainant